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No. 83-1894

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

PATTERN MAKERS' LEAGUE OF NORTH AMERICA, AFL-CIO, AND ITS ROCKFORD AND BELOIT ASSOCIATIONS,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD

and

ROCKFORD-BELOIT PATTERN JOBBERS ASSOCIATION,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Is the National Labor Relations Board granted the authority by the National Labor Relations Act, as amended, to invalidate provisions in union constitutions and bylaws requiring union members to retain their membership during a strike or lockout or at a time when a strike or lockout appears imminent?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

TABLE OF AUTHORITIES—Continued

MISCELLANEOUS

STATUTES

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OPINIONS BELOW

The National Labor Relations Board's decision and order in this case is reported at 265 NLRB 1332, and is reprinted at pp. 9a-44a of the appendix (hereafter "App.") to the petition for a writ of certiorari. The United States Court of Appeals for the Seventh Circuit's opinion and judgment is reported at 724 F.2d 57 and is reprinted at App. 1a-8a.

JURISDICTION

The Seventh Circuit's opinion and judgment were issued on December 21, 1983. On April 10, 1984, Justice Stevens signed an order extending the time for filing a petition for a writ of certiorari to and including May 18, 1984. The certiorari petition was filed that day and was granted on October 1, 1984. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 7 of the National Labor Relations Act ("NLRA"), as amended, 29 U.S.C. § 157, provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) of this Act.

Section 8(b)(1)(A) of the NLRA, 29 U.S.C. § 158(b)(1)(A), provides:

> It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 of this Act: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * *.

STATEMENT OF THE CASE

A. The Facts

All members of petitioner Pattern Makers' League (hereafter "the League" or "the Union") take an Oath of Membership obligating them to adhere to the Union's "Constitution, Laws, Rules and Decisions." App. 30a. And, League Law 13 provides:

> [N]o resignation or withdrawal from an Association, or from the League, shall be accepted during a strike or lockout, or at a time when a strike or lockout appears imminent. [App. 28a, n.3.]

This amendment to the Union's governing laws was ratified in August 1976 by a membership vote after "appropriate notice procedures" (App. 30a), and became effective in October 1976 (*id.*).

The following year, on May 5, 1977, petitioners Rockford and Beloit Associations (hereafter "the Local Unions") commenced a strike against the Rockford-Beloit Pattern Jobbers Association, a multiemployer association. All members of the Local Unions received notice of, and all but one participated in, the secret ballot vote authorizing the strike. App. 30a. All striking members received between $125 and $150 a week in strike benefits. *Id.* Nonetheless, and notwithstanding both the restriction on resignation contained in League Law 13 and the members' awareness of that restriction,[1] some eleven members sought to resign their union membership during the strike and then returned to work while the strike was still in effect. *Id.* at 27a-28a, 29a-30a. The direct results of their actions, according to unrebutted testimony, was that the strike was prolonged, and

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[1] "There is no contention * * * that the members who tendered their resignations were unaware of the restrictions on resignation imposed [by League Law 13]." App. 33a-34a.

that it became necessary for the Local Unions to accept a contract embodying substandard wages and benefits. *Id.* at 31a.

The strike ended on December 19, 1977. On January 26, 1978, the Unions sent letters to the members who had sought to resign during the strike, informing them that their resignations could not be accepted because those resignations were in violation of League Law 13, and after appropriate proceedings, the strikebreaking members were fined for working for the struck employers. In response those employers, through their association, filed charges with the National Labor Relations Board (hereafter "NLRB" or "the Board"), claiming that the Unions had violated § 8(b)(1)(A) of the National Labor Relations Act, as amended, by imposing those fines.

B. The NLRB Decisions in the Instant Case and in the Companion *Dalmo Victor* Case

After a decision by an Administrative Law Judge, the NLRB, "having determined that this and another case involving the right of a labor organization to impose restrictions on a member's right to resign presented issues of importance in the administration of the National Labor Relations Act" (App. 9a), set both cases for oral argument in tandem on January 16, 1980, before the full Board.

After nearly three years of consideration, the companion case, *Machinists Local 1327 (Dalmo Victor)*, 263 NLRB 984 (1982), was decided by the Board on September 10, 1982, with the decision in the instant case following on December 16, 1982. In both cases the Board held that the respondent unions had committed unfair labor practices by fining members who sought to resign their membership and returned to work during a strike, even though the union's constitution or laws expressly restrict resignations during strike periods.

In *Dalmo Victor*, four of the five Board members held, in two separate, lengthy, and somewhat divergent opinions, that a union rule permitting union members to resign only if the resignations are submitted at least 14 days preceding the commencement of a strike is unenforceable.[2]

Members Fanning and Zimmerman found that "a union rule which limits the right of a union member to resign only to nonstrike periods constitutes an unreasonable restriction on a member's Section 7 right to resign." 263 NLRB, at 986. However, "find[ing] it salutary to set forth a general rule for the behavior of parties in the area," these two Board Members decreed that unions ordinarily may prohibit their members from resigning only "for a period not to exceed 30 days after the tender of such a resignation." *Id.*, at 987.

Chairman Van de Water and Member Hunter agreed that the Machinists had committed an unfair labor prac-

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[2] The rule at issue in *Dalmo Victor* provides: "Resignation shall not relieve a member of the obligation to refrain from accepting employment at the establishment for the duration of the strike or lockout within 14 days preceding its commencement." The NLRB originally held that this provision is not a restriction on resignation during the strike period but, instead, a restriction on postresignation conduct, and found an unfair labor practice on that theory. *Machinists Local 1327 (Dalmo Victor)*, 231 NLRB 115 (1977). On review the Ninth Circuit rejected the Board's construction of the clause as "hypertechnical," concluding that the provision "is a restriction on a member's right to resign." *NLRB v. Machinists Local 1327*, 608 F.2d 1219, 1222 (9th Cir., 1979). Because the Board majority had not reached the question whether a union constitutional provision restricting resignation would be valid, the Ninth Circuit remanded the case to the Board. Pursuant to the remand, the Board accepted as the law of the case the Ninth Circuit's construction of the Machinists' provision (263 NLRB, at 984 n.4), and proceeded to decide "whether a union can, pursuant to an internal rule prohibiting resignations during a strike or within 14 days preceding its commencement, lawfully impose a fine on members who tendered resignations and returned to work during the course of a strike" (*id.* at 984).

tice by fining its resigning members, but challenged their colleagues' 30-day rule as "an arbitrary exercise of this Board's authority" that represented "a transparent effort to achieve a legislative result rather than a reasoned legal conclusion." 263 NLRB at 987. Those two Board Members concluded that *any* restriction imposed by a union upon its members' right to resign would be *per se* unreasonable, and that any fine or any other discipline "premised" on such a restriction would constitute an unfair labor practice under § 8(b)(1)(A). *Id.*, at 988.

Member Jenkins dissented in *Dalmo Victor*, concluding that the Machinists prohibition of resignations during a strike, or within the 14 days preceding a strike, constitutes a reasonable and valid internal union rule explicitly protected by the proviso to § 8(b)(1)(A). 263 NLRB at 994. In his view,

> [the union] was entitled to levy fines against the Charging Parties as a means of enforcing a lawful constitutional provision governing retention of membership, a subject expressly excluded from the scope of Section 8(b)(1)(A) by the proviso thereto, and within the ambit of a union's control over its internal affairs. [263 NLRB at 994.]

In the instant case, the Board wrote very briefly on the pertinent issue, adopting both the result and rationale of the *Dalmo Victor* case:

> League Law 13 suffers from the same infirmity as did the rule in *Dalmo Victor*. While League Law 13 apparently provides for resignations during nonstrike periods, it clearly prohibits any such resignations once a strike has begun or when one "appears imminent." Under the Board's holding in *Dalmo Victor*, League Law 13 can be considered as neither valid nor enforceable. [App. 13a.] [3]

[3] There were other, separate unfair labor practice charges resolved in the Board decision and order in this case. None of these other Board determinations were contested in the court below (App. 2a-3a, n.1), and no question concerning these holdings is presented to this Court. *See* p. i *supra*.

Member Jenkins filed a dissenting opinion in *Pattern Makers*, as he had in *Dalmo Victor*, in which he stated:

> I would find that League Law 13, as applied herein, is a reasonable and narrow restriction on the employees' right to resign their union membership, and is within the ambit of the Union's control over its internal affairs. Accordingly, I also would find that the fines imposed pursuant to League Law 13 on the 10 employees who crossed the Union's picket lines were lawful and not in violation of the proscriptions of Section 8(b)(1)(A) of the Act. [App. 22a.]

C. The Court of Appeals Decisions in the Instant Case and in the Companion *Dalmo Victor* Case

The Unions sought review of the Board's decision herein, insofar as that decision invalidated League Law 13, in the United States Court of Appeals for the Seventh Circuit. That court upheld the Board's ruling.

The Seventh Circuit began from the premise that the instant case is one "present[ing] an apparent conflict between two fundamental policies underlying the NLRA," which that court identified as the right of employees to refrain from collective bargaining activities and the right of unions to regulate their internal affairs without congressional or court interference. App. 3a-4a. The court below while acknowledging (App. 1a) that this Court has twice explicitly *left open* the question whether union constitutional provisions restricting resignations during a strike period are enforceable under the NLRA viewed this Court's decisions as establishing that "[a]n employee's right to resign cannot be overridden by union interests in 'group solidarity and mutual reliance'." App. 6a.

Machinists Local 1327 sought review of the Board's decision in the companion *Dalmo Victor* case in the United States Court of Appeals for the Ninth Circuit. That court granted the petition for review and denied the Board's cross petition for enforcement. *Machinists Local 1327 v. NLRB*, 725 F.2d 1212 (9th Cir., 1984).

Unlike the Board and the court below, the Ninth Circuit viewed the new rule against union restrictions on resignations during a strike as one which "frustrates federal labor policy in important respects." 725 F.2d at 1215. Relying on *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, the Ninth Circuit stressed that:

> [N]either Congress nor the [Supreme] Court gave individual members license to avoid union rules designed to protect the welfare of the bargaining unit. [This is why] Congress • • • enacted the proviso to § 8(b)(1)(A), which reserves the unions the power to make reasonable rules regarding the retention and acquisition of membership. [725 F.2d, at 1216.]

Again, unlike the Board and the court below, the Ninth Circuit, while recognizing that "'the power of the union over the member is certainly no greater than the union-member contract'" (725 F.2d at 1218, *quoting NLRB* v. *Textile Workers*, 409 U.S., 213, 217), maintained that, under the § 8(b)(1)(A) proviso, the member's obligation is, under the present circumstances, also no *less* than the obligation the union constitution and bylaws establish:

> [T]he terms of the contract before us condition the member's right to resign on his promise not to break the strike. If the member can escape his obligations by pleading, when the union attempts to collect the fine, that he is no longer part of the union, then the terms of this contract mean little. [725 F.2d at 1218.]

D. The NLRB Decision in the *Neufeld Porsche-Audi* Case

Subsequent to the Seventh Circuit decision in this case and the Ninth Circuit decision in the *Dalmo Victor* case, the Board, in *Machinists Local 1414 (Neufeld Porsche-Audi, Inc.)*, 270 NLRB No. 209 (June 22, 1984), returned to the question presented here. In that decision, three members of the Board (Chairman Dotson and Members Hunter and Dennis) stated, "we hold that the [union's] restriction on resignations [at issue], *as well as any other restriction a union may impose on resignation, is invalid* • • •." 270 NLRB No. 209, Sl. Op. at 5-6; emphasis added. Member Zimmerman adhered to the position he and Member Fanning had stated in *Dalmo Victor*. *Id.* at 22-23 and *see* p. 5, *supra*.

The Board majority, while noting that this Court has not "expressly address[ed] a union's authority to restrict resignations" (270 NLRB No. 209, Sl. Op. at 6) believed that the "principles embodied" in this Court's decisions "compel the conclusion that • • • *any restrictions placed by a union on its member's right to resign* • • • *are unlawful*" (*id.* at 9; emphasis added). Those Board members relied in particular on the proposition that "when a union seeks to delay or otherwise impede a member's resignation, it directly impairs the employee's Section 7 right to resign or otherwise refrain from union or other concerted activities" (*id.* at 10-11).

SUMMARY OF ARGUMENT

To make out the § 8(b)(1)(A) unfair labor practice found by the NLRB here it is necessary to show, in the statutory language, not only that the employees in question were "exercis[ing] • • • rights guaranteed in section 7," *but also* that the union "restrain[ed] or coerc[ed]" the employees in the exercise of those rights *and further* that the union's actions are *not* protected by § 8(b)(1)(A)'s proviso which states that the foregoing prohibition "shall not impair the right of a labor organization to prescribe its own rules with respect to

the acquisition or *retention* of membership therein," (emphasis supplied).

A. The plain words of § 8(b)(1)(A)'s proviso read naturally clearly encompass the union resignation rule at issue here. A rule providing that a union member is required to continue his membership during a strike is surely a rule "with respect to the • • • retention of membership;" indeed, it is more clearly such a rule than the only other kind of rule to which the phrase could possibly refer—a rule providing that under certain circumstances a union member will be expelled, *viz.*, deprived of continued membership.

The legislative history not only supports this reading of the proviso, but forcefully negates the proposition that Congress intended by §§ 7 and 8(b)(1)(A) to outlaw union rules restricting resignation from membership.

Section 8(b)(1)(A) and its proviso originated in the Senate in the course of the floor debate on the bill eventually enacted as the Labor Management Relations Act of 1947. Senator Ball, a sponsor of § 8(b)(1)(A), agreed to accept an amendment adding the proviso in its present terms proposed by Senator Holland. Their statements in describing the purpose of the proviso accord with its literal language by confirming that the proviso is intended to cover "rules of membership either with respect to beginning or terminating membership" (Senator Holland) and "the requirements and standards of membership itself" (Senator Ball). Union resignation rules are, on any view, a paradigm example of rules "with respect to • • • terminating membership" and rules on "the requirements • • • of membership itself."

The LMRA also added to § 7 of the original NLRA, the provision enumerating the "concerted activities" protected by the Act, the phrase "and shall also have the right to refrain from any or all such activities • • •." This addition originated in § 7(a) of the House of Representatives Bill. Its proponents explained its purpose

as simply being to assure that the "Board will be prevented from compelling employees to exercise [the] rights [stated in § 7 of the original NLRA] against their will". This limiting explanation is buttressed by the House Bill's structure.

Section 7 of the House Bill was divided into a subsection (a) granting rights to "employees" generally and a subsection (b) granting rights concerning the "affairs of the organization" to "members of any labor organization." This, like the sponsors' statement of the point of the right to refrain amendment, shows that the sponsors of the House Bill did *not* intend through § 7(a) to regulate the relationship between unions and their members by creating a body of membership rights.

What the language, structure and explanations of §§ 7(a) and 7(b) of the House Bill evidence, the language, structure and explanations of §§ 8(b) & 8(c) confirm. Section 8(c), which related back to § 7(b), would have made it an unfair labor practice for unions to "interfere with, restrain, or coerce employees in the exercise of rights granted by § 7(b)," rights, *inter alia*, "to have the affairs of the organization conducted in a manner that is fair to its members." Section 8(c)(4), in terms, would have made it an unfair labor practice for a union "*to deny to any member the right to resign from the organization at any time.*"

Thus, the Board's construction of the right to refrain included in § 7 of the LMRA attributes to its predecessor provision—the House Bill's § 7(a) (and its companion § 8(b))—a meaning which encompasses all of the subject matter of §§ 7(b) and 8(c) of the House Bill, a meaning that phrase will bear only on the wholly implausible assumption than its sponsors intended §§ 7(b) and 8(c) of the House Bill to be redundant.

The House-Senate Conferees who put together the final version of the LMRA added to § 7 of the original NLRA the right to refrain language from § 7(a) of the House Bill and added to the Act the Senate Bill's § 8(b)(1)(A)

including its proviso; the Conference Bill did not include any of the other House amendments to § 7, the House Bill's § 8(b)(1) or any part of the House Bill's § 8(c).

Senator Taft explained that the effect of adopting the "right to refrain" language, "[t]aken in conjunction with section (b)(1) of the conference agreement," excludes "many forms and varieties of concerted activities" from the protections of the Act. The statement of the House Managers provides the same explanation. And the House Managers acknowledged that, with one exception, § 8(c) of the House Bill had been rejected in the Conference.

Given all of the foregoing—and especially the elimination of § 8(c) of the House Bill including its § 8(c)(4) —the governing precedent is *Labor Board v. Drivers Local Union*, 362 U.S. 274, 289, where this Court rejected an earlier Board attempt to read into § 8(b)(1)(A) a union unfair labor practice stated in the House Bill that the 1947 Congress did not choose to enact into law:

> Plainly * * * the [union's] conduct in the instant case would have been prohibited if the House bill had become law.
>
> But the House conferees abandoned the House bill in conference and accepted the Senate proposal. * * *

B. In *NLRB v. Textile Workers*, 409 U.S. 203 and again in *Machinists & Aerospace Workers v. NLRB*, 412 U.S. 84, the Court, in order to determine whether a union member has "lawfully resign[ed]" from the union where its constitution and bylaws are silent on the subject of voluntary resignation, looked to the "law which normally is reflected in our free institutions" that defines the "right of the individual * * * to resign from associations." As the Court stated, under that body of law, in that circumstance, "members [are] free to resign at will."

Since, as we have shown, the § 8(b)(1)(A) proviso preserves intact "the right of a labor organization to prescribe its own rules with respect to the * * * retention

of membership," the inquiry here reduces to that undertaken in *Textile Workers* and *Machinists*: whether under the common law of associations the resignations here were lawful.

The common law decisions establish that an association may place restrictions on its members' right to resign where such restrictions are designed to further a basic purpose for which the association was formed. The Union's resignation rule is, of course, precisely that type of restriction. The Pattern Makers promulgated that rule to protect the common interest of maintaining a united front during the most critical time a union faces—an economic strike. Each member joined the union, or retained his membership when free to resign, with the understanding that he was agreeing not to resign during a strike or when a strike appeared imminent, and with the further understanding that other members were agreeing to be similarly bound.

ARGUMENT

The National Labor Relations Board's decision herein outlines the nature of this case and the positions of its General Counsel, which the Board adopted, and of the respondent Unions with regard to the Board's authority to invalidate a rule embodied in a union's constitution or bylaws defining or limiting the circumstances under which a union member may resign his membership:

> The principal issue in this case involves the question of whether [the Unions] violated Section 8(b)(1)(A) of the Act by imposing fines on members who tendered resignations and returned to work during the course of a strike in apparent contravention of [the Unions'] rule [stated in League Law 13] prohibiting resignations during a strike or lockout or when one appeared imminent.
>
> * * * *
>
> The General Counsel contends that League Law 13 unlawfully intrudes into the rights guaranteed to employees by Section 7 of the Act and that, conse-

> quently, the fines imposed thereunder are unlawful and in violation of Section 8(b)(1)(A) of the Act. [The Unions], on the other hand, assert that League Law 13 constitutes a valid exercise of their right to enact internal union rules governing the acquisition and retention of membership as set forth in the proviso to Section 8(b)(1)(A). They therefore argue that the fines imposed on those individuals who resigned and returned to work during the strike in violation of such rule were lawful. [App. 10a-11a.]

To make out the § 8(b)(1)(A) unfair labor practice found by the Board here it is necessary to show, in the statutory language, not only that the employees in question were "exercis[ing] * * * rights guaranteed in section 7," *but also* that the union "restrain[ed] or coerc[ed]" the employees in the exercise of those rights *and further* that the union's actions are *not* protected by § 8(b)(1)(A)'s proviso stating that the foregoing prohibition "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or *retention* of membership therein," (emphasis supplied). *See* p. 2 *supra* (setting out the statutory language).

It is our position that the office of the § 8(b)(1)(A) proviso is to preserve for the unions covered by the NLRA the right recognized in the common law of associations—"the law which normally is reflected in our free institutions" (*NLRB v. Textile Workers*, 409 U.S. 213, 216)—to prescribe in the union's constitution or bylaws, which establish "the contractual relationship between union and member" (*id.* at 217), "its own rules with respect to the * * * retention of membership" including the resignation rule at issue here. Congress' purpose in adding the proviso was to make it manifest that § 8(b)(1)(A) does *not* grant the Board the authority to "impair" this basic right of all membership associations.

1. The issue posed here is framed by what this Court has decided and what the Court has left open in *NLRB*

v. Allis-Chalmers Mfg. Co., 388 U.S. 175 and its progeny. The most recent of these decisions are *NLRB v. Boeing Co.*, 412 U.S. 67, and its companion case *Machinists & Aerospace Workers v. NLRB*, 412 U.S. 84. The *Boeing* and *Machinists* opinions in concise terms state the relevant background principles.

In *Boeing* the Court first summarized its prior holdings on the meaning of § 8(b)(1)(A):

> We have previously held that § 8(b)(1)(A) was not intended to give the Board power to regulate internal union affairs, including the imposition of disciplinary fines, with their consequent court enforcement, against members who violate the unions' constitutions and bylaws. *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967); *Scofield v. NLRB*, 394 U.S. 423 (1969). In *Allis-Chalmers* we held that court enforcement of fines ranging from $20 to $100 for crossing picket lines did not "restrain or coerce" employees within the meaning of the Act. And in *Scofield* we held that the union did not violate the Act in imposing fines of $50 and $100 on members for violating a union rule relating to production ceilings. [412 U.S. at 71-72.]

And the *Boeing* Court then noted that "[i]n deciding these cases, the Court several times referred to the unions' imposition of 'reasonable' fines" and that the "Company contends, not illogically, that the Court's use of the adjective 'reasonable' was intended to suggest to the Board that an unreasonable fine would amount to an unfair labor practice." 412 U.S. at 72. But the Court rejected that contention: "Given the rationale of *Allis-Chalmers* and *Scofield*, the Board's conclusion that § 8(b)(1)(A) of the Act has nothing to say about union fines of this nature, whatever their size, is correct." 412 U.S. at 74.

In the *Machinists* case the Court summarized and followed its ruling in the *Textile Workers* case:

> In *NLRB v. Textile Workers*, 409 U.S., at 217, we held that "[w]here a member lawfully resigns from

a union and thereafter engages in conduct which the union rule proscribes, the union commits an unfair labor practice when it seeks enforcement of fines for that conduct." Since in that case there was no provision in the Union's constitution or bylaws limiting the circumstances in which a member could resign, we concluded that the members were free to resign at will and that § 7 of the Act, 29 U.S.C. § 157, protected that right to return to work during a strike which had been commenced while they were union members. The Union's imposition of court-collectible fines against the former members for such work was, therefore, held to violate § 8(b)(1)(A).

Here, as in Textile Workers, the Union's constitution and bylaws are silent on the subject of voluntary resignation from the Union. And here, as there, we leave open the question of the extent to which contractual restriction on a member's right to resign may be limited by the Act. Since there is no evidence that the employees here either knew of or had consented to any limitation on their right to resign, we need "only to apply the law which normally is reflected in our free institutions—the right of the individual to join or to resign from associations, as he sees fit 'subject of course to any financial obligations due and owing' the group with which he was associated." *Textile Workers, supra*, at 216. [412 U.S. at 87-88; emphasis added; footnotes omitted.]

In sum, under *Allis-Chalmers* and *Boeing*, it is *not* an unfair labor practice for a union to adopt a rule prohibiting "full union members" from engaging in strikebreaking activity, to fine members who violate that rule and to bring suit to collect such fines in the state courts;[4]

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[4] In *Allis-Chalmers* the Court noted:

> It is clear that the fined employee[] involved herein enjoyed full union membership * * * [and] "had by his actions become a member of the union for all purposes . . . ." * * * Whether [§ 8(b)(1)(A)'s] prohibitions would apply if the locals had imposed fines on members whose membership was in fact limited to the obligation of paying monthly dues is a question not before us and upon which we intimate no view.[37]
>
> * * * *
>
> [37] Under § 8(a)(3) the extent of an employee's obligation under a union security agreement is "expressly limited to the payment of initiation fees and monthly dues . . . 'Membership' as a condition of employment is whittled down to its financial core." *Labor Board v. General Motors Corp.*, 373 U.S. 734, 742. [388 U.S. at 196-197 & n.37.]

under *Textile Workers* and *Machinists*, it *is* an unfair labor practice for a union that has adopted an anti-strikebreaking rule to impose "court-collectible fines" against a member who has "lawfully resign[ed]" from membership for his actions after resignation (412 U.S. at 87-88); and under *Textile Workers* and *Machinists*, which "apply the law * * * normally reflected in our free institutions," where there is no provision in the union's constitution or bylaws "limiting the circumstances in which a member could resign," members are "free to resign at will" (412 U.S. at 87-88).

While this Court has settled that much, the Court has also twice chosen to "leave open the question of the extent to which contractual restriction on a member's right to resign may be limited to the Act". *Machinists*, 412 U.S. at 88; *Textile Workers*, 409 U.S. at 217. That is the question presented by this case.

The Board's answer to that question is that § 8(b)(1)(A) of the Act invalidates the "contractual restriction" stated in League Law 13 and, indeed, as the Board's recent comprehensive restatement of its position makes clear, "any restriction[] placed by a union on its member's right to resign" (*Neufeld Porsche-Audi*, 270 NLRB No. 209, Sl. Op. 9). In its *Neufeld Porsche-Audi* opinion, the Board does not discuss, much less analyze, the plain language of the proviso to § 8(b)(1)(A) or the legislative history of the Labor Management Relations Act of 1947 which both added to § 7 of the original NLRA an express "right to refrain from any or all [of

the concerted] activities" enumerated in that section, and added to the Act § 8(b)(1)(A) and its proviso. We therefore begin by reviewing these governing materials in interpreting an Act of Congress.

2. The plain words of § 8(b)(1)(A)'s proviso read naturally clearly encompass union resignation rules of the kind here at issue. A rule providing that a union member is required to continue his membership during a strike is surely a rule "with respect to the • • • retention of membership;" indeed, it is more clearly such a rule than the only other kind of rule to which the phrase could possibly refer—a rule providing that under certain circumstances a union member will be expelled, *viz.*, deprived of continued membership. In dryly literal terms, expulsion rules concern not "retention of membership" but the inverse—"nonretention (loss) of membership." The point for present purposes, however, is that in terms of a fair reading of the statutory language, rules requiring continued membership and rules denying continued membership are both well within the normal meaning of the phrase "rules with respect to the • • • retention of membership."

3. The House of Representatives acted first on the proposals to amend the original NLRA that were considered by the 1947 Congress. But both § 8(b)(1)(A) and its proviso are the Senate's product and we therefore turn first to the events in that body.

Section 7 of S. 1126, 80th Cong., 1st Sess., the Senate Committee on Labor and Public Welfare Bill, as reported, tracked § 7 of the original NLRA and the Senate Committee Bill's § 8(b)(1), went only so far as to make it an unfair labor practice for a labor organization to "interfere with, restrain or coerce an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances" (the unfair labor practice eventually enacted as § 8(b)(1)(B)

of the Act). National Labor Relations Board, Legislative History of the Labor Management Relations Act of 1947, 109, 112 (G.P.O. 1948) (hereafter "Leg. Hist.").[5]

In their supplemental views attached to the Senate Committee Report, Senators Taft, Ball, Donnell and Jenner proposed broadening § 8(b)(1) by adding after "coerce" the phrase "employees in the exercise of the rights guaranteed in section 7." S. Rep. No. 105, 80th Cong., 1st Sess., 50; Leg. Hist. 456. During floor consideration of the Senate Committee Bill, Senator Ball did move that amendment. Leg. Hist. 1018. And, during the Senate's consideration of his amendment, Senator Ball agreed to two amendments to the proposed § 8(b)(1)(A), one by Senator Ives striking the words "interfere with" and another by Senator Holland adding the proviso in its present terms. Leg. Hist. 1138-1141.

In offering his amendment to the Ball amendment in a form consistent with the Senate's parliamentary rules —an earlier attempt having been out of order for reasons having nothing to do with the proviso's substance— Senator Holland, after reading the suggested statutory language, stated:

> In other words, if accepted by the sponsors of the pending amendment, the inserted words would make it clear that the pending [Ball] amendment would have *no application to or effect upon the right of a labor organization to prescribe its own rules of membership either with respect to beginning or terminating membership.* I understand that the amendment so offered meets with no serious objection of the part

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[5] The Senate Committee Bill created five union unfair labor practices. In addition to its § 8(b)(1) just described, § 8(b)(2) of that bill prohibited union efforts to persuade an employer to discriminate against an employee, § 8(b)(3) imposed a duty to bargain in good faith, § 8(b)(4) dealt with the secondary boycott and § 8(b)(5) concerned breaches of collective bargaining agreements. Leg. Hist. 112-114.

> of the sponsors of the pending amendment. [Leg. Hist. 1141; emphasis added.]

In his earlier procedurally imperfect attempt to introduce the amendment, Senator Holland had said:

> I have had some discussion with the Senator from Minnesota [Mr. BALL] and the Senator from Ohio [Mr. TAFT] and with other Senators in reference to the meaning of the pending [Ball] amendment and as to how seriously, if at all, it would affect the internal administration of a labor union.
>
> Apparently it is not intended by the sponsors of the amendment to affect at least that part of the internal administration which has to do with the admission or the expulsion of members, that is with the questions of membership. So I offer an amendment as a substitute for the amendment of the Senator from Minnesota [adding the § 8(b)(1)(A) proviso in its present terms]. [Leg. Hist. 1139.]

In accepting the perfected Holland Amendment, Senator Ball responded:

> I merely wish to state to the Senate that the amendment offered by the Senator from Florida is perfectly agreeable to me. It was never the intention of the sponsors of the pending amendment to interfere with the internal affairs or organization of unions. The amendment of the Senator from Florida makes that perfectly clear. I am willing, on behalf of myself and the other sponsors of the amendment, to accept the amendment offered by the Senator from Florida and, if it is necessary, so to modify and perfect my own amendment. [Leg. Hist. 1141.]

At a later point in the debate, Senator Ball, in describing his amendment and the "modification" to that amendment made by Senator Holland, stated:

> That modification is designed to make it clear that we are not trying to interfere with the internal affairs of a union which is already organized. All we are trying to cover is the coercive and restraining acts of the union in its effort to organize unorganized employees. However, the proviso would not go so far as to permit the union to adopt rules authorizing its agents to threaten and coerce nonunion members in an effort to persuade them to join. *The modification covers the requirements and standards of membership in the union itself.* [Leg. Hist. 1200; emphasis added.]

So far as our researches show, the foregoing are the only direct comments on the meaning and effect of the § 8(b)(1)(A) proviso. And, the sponsors' statements are consonant with the provision's literal language protecting union rules "with respect to the acquisition or retention of membership." Those statements confirm that the proviso is intended to cover "rules of membership either with respect to beginning or terminating membership" (Senator Holland) and "the requirements and standards of membership itself" (Senator Ball). Union resignation rules are, on any view, a paradigm example of rules "with respect to the * * * retention of membership," rules "with respect to * * * terminating membership" and rules on "the requirements * * * of membership itself."[*]

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[*] The question of the extent to which § 8(b)(1)(A)'s terms "restrain or coerce," standing alone, cover union discipline that does not involve a physical wrong or threat thereof or interference with job rights was the occasion of more extended comment. That legislative debate, however, which is reviewed in depth in the Court's opinion in *Allis-Chalmers*, 388 U.S. at 184-190, casts no light on the issue posed here. As noted above, *Allis-Chalmers* holds, and *Boeing* reaffirms, that whatever doubts there may be about the extent to which Congress provided the Board room to invalidate *other* union disciplinary rules, the legislative history shows that rules against strikebreaking enforced against union members through union proceedings and state court actions to collect any resulting fine do *not* constitute unlawful restraint or coercion under § 8(b)(1)(A). Thus, it is entirely lawful for a union to try and fine individuals who *are in fact* union members for violating the union's ban on strikebreaking. And, there is nothing in the debate on the meaning of restraint and coercion under § 8(b)(1)(A) addressed to who is to be deemed to be a union member.

4. The House of Representatives' approach to regulating the relationship between unions and their members was at the furthest remove from the Senate's approach. H.R. 3020, 80th Cong., 1st Sess., the bill reported by the House Committee on Education and Labor, and passed by the House without any change relevant here, did all of the following.

First, § 7 of the House Bill provided:

> SEC. 7. (a) *Employees shall have the right* to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities (not constituting unfair labor practices under section 8(b), unlawful concerted activities under section 12, or violations of collective-bargaining agreements) for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities: *Provided*, That nothing herein shall preclude any employer from making and carrying out an agreement with a labor organization as authorized in Section 8(d)(4).
>
> "(b) *Members of any labor organization shall have the right* to be free from unreasonable or discriminatory financial demands of such organization, to freely express their views either within or without the organization on any subject matter without being subjected to disciplinary action by the organization, and *to have the affairs of the organization conducted in a manner that is fair to its members* and in conformity with the free will of a majority of the members. [Leg. Hist., 49-50, 176; emphasis added.] [7]

[7] Section 12 of the House bill, referred to in § 7(a), made all of the following "unlawful concerted activities": "force, violence, physical obstruction or threats thereof in labor disputes * * * picketing in numbers or in ways other than those reasonably necessary to give notice of the existence of a labor dispute at the place being picketed * * * picketing a place of business at which no labor dispute exists * * * sympathy strikes, jurisdictional strikes, monopolistic strikes, illegal boycotts, sitdown strikes, and featherbedding * * * strikes and other concerted activities in lieu of using peaceful procedures for settling disputes that the National Labor Relations Act provides * * *." H. Rep. No. 245, 80th Cong., 1st Sess., 44; Leg. Hist. 335.

The House Committee Report explained the Committee's addition at the end of § 7 of the NLRA, as enacted in 1935, of the phrase "and shall also have the right to refrain from any or all such activities" as follows:

> A committee amendment assures that when the law states that employees are to have rights guaranteed in section 7, *the Board will be prevented from compelling employees to exercise such rights against their will*, as it has consistently done in the past. In other words, when Congress grants to employees the right to engage in specified activities, it also means to grant them the right to refrain from engaging therein if they do not wish to do so. [H. Rep. No. 245, 27; Leg. Hist. 318; emphasis added.]

And the Committee Report stated the purpose of the entirely new § 7(b) in these words:

> *Section 7(b).*—The bill adds a new paragraph (b) to section 7. This is designed to protect members of those unions that, instead of following fair and democratic processes in managing their affairs, treat their members as pawns and exploit them for the enrichment or aggrandizement of self-perpetuating leaders. The committee included this clause in response not only to the demands of simple justice, but in response also to pleas of many sincere union people who regard more democracy in unions as one of the greatest needs of unionism. *When, under the Labor Act, we confer upon unions the power they have as exclusive bargaining agents*, entiled by law to handle all the dealings of employees with their employers, clearly *it is incumbent upon us, by the same law, to assure to the employees whom we subject to union control some voice in the union's affairs. This we do by the general provisions of section 7(b), which are implemented by the provisions of section*

8(c). [H. Rep. No. 245, 28; Leg. Hist. 319; emphasis added.]

Section 8(b) of the House Bill, in turn, created three unfair labor practices, the first of which stated:

> (b) It shall be an unfair labor practice for an employee, or for a representative or any officer of a representative, or for any individual acting for or under the direction of a representative, or for or under the direction of any officer thereof—
>
> > (1) by intimidating practices, to interfere with the exercise of employees of rights guaranteed in section 7(a) or to compel or seek to compel any individual to become or remain a member of any labor organization; * * *. [Leg. Hist. 51-52, 178-179.] *

Section 8(c) of the House bill went on to create ten additional unfair labor practices regulating all major facets of the relationship between unions and their members; the first and fourth of these read as follows:

> (c) It shall be an unfair labor practice for a labor organization or any officer thereof, or for any individual acting for or under the direction of a labor organization or for or under the direction of any officer thereof—
>
> > (1) to interfere with, restrain, or coerce individuals in the exercise of rights guaranteed in *section 7(b)*;
> >
> > * * * *
> >
> > (4) *to deny to any member the right to resign from the organization at any time*; * * *. [Leg. Hist. 52-53, 179-180; emphasis added.] *

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* Sections 8(b)(2) & 8(b)(3) of the House Bill imposed a duty to bargain on unions acting as exclusive bargaining representatives and forbade strikes and other concerted activities over matters that are not "a proper subject matter for bargaining." Leg. Hist. 51-52, 178-179.

* Section 8(c)(2) of the House Bill regulated union initiation fees and union dues; § 8(c)(3) thereof prohibited required participation in union insurance and benefit plans, § 8(c)(5) & (6) regulated numerous aspects of how and for what actions union members may be tried for violating union rules; § 8(c)(7) concerned the subject of union security; § 8(c)(8) required that various union matters be decided by secret ballot; § 8(c)(9) prohibited union spying on members and union intimidation of a member's family; and § 8(c)(10) provided for financial reporting. Leg. Hist. 52-56; 179-183.

With regard to § 8(b)(1) the House Committee Report stated:

> *Section 8(b)(1)*.—This is new, making it an unfair labor practice for labor organizations, their officers, agents and representatives, or for employees, to interfere with, restrain or coerce employees. *There is included in this provision a qualification* which is not found in the corresponding paragraph covering employers—*namely, that the interference proscribed is interference by intimidation.* Although it is not intended to permit representatives and their partisans and adherents to harass or abuse employees into joining labor organizations or designating them as their bargaining representatives, it is the purpose of the committee to make entirely certain that Congress does not forbid representatives, by reasonable means, to persuade employees to join the unions. [H. Rep. No. 245, 30; Leg. Hist. 321; emphasis added.]

And, § 8(c)(1) & (4) were described as follows:

> *Section 8(c)(1)*.—Using the device of Section 8(a)(1), the bill makes it an unfair labor practice for unions to interfere with, restrain, or coerce members in the exercise of the general rights guaranteed by section 7(b).
>
> *Section 8(c)(4).—The right to resign from any organization is a fundamental right. This section preserves that right for union members.* (If, when a member resigns, there is in effect as to him an agreement permitted under sec. 8(d)(4), his resigning may result in his losing his job, unless his resignation results from an unfair labor practice by the union under sec. 8(b)(1) or under sec. 8(c).) [H. Rep. No. 245, 31-32; Leg. Hist. 322-323; emphasis added.]

Before turning to a consideration of how the very different Senate Bill and House Bill were transformed in conference into the LMRA, it is, we believe, worth underlining two points about the House Bill.

First, the grant to each employee covered by the NLRA § 7(a) of the House Bill of a "right to refrain from any or all of [the concerted] activities" enumerated in that section does not, on its face, appear to be a grant of a right to join a union whose constitution and bylaws specify limits on resignation and then to resign at any time and in any manner without regard to the organization's rules. While a right to "refrain" most assuredly connotes a right not to join the organization at all, that word is not normally used to signify a right to abandon an agreed-on undertaking at will and without regard to the nature of the agreement. And there is not even a suggestion that the sponsors of the "right to refrain" amendment intended any such arcane meaning. The point of that phrase was *not* said to be to add to the rights of employees who become union members vis-a-vis their union but only to "assure that • • • the *Board* will be prevented from compelling employees to exercise such rights against their will • • •." H. Rep. No. 245, 27; Leg. Hist. 318. Thus, according to its sponsors, this amendment to § 7 of the original NLRA was intended to be a limit on what the *Board* could compel employees to do, not a warrant for the Board to invalidate union rules that, in the Board's view, work an unacceptable compulsion on employees.

Second, the division of § 7 of the House Bill into a subsection (a) granting rights to "employees" generally and a subsection (b) granting rights concerning the "affairs of the organization" to "members of any labor organization" is further evidence that the sponsors of the House Bill did *not* intend by § 7(a) to create a body of membership rights for union members or to otherwise regulate the union-member relationship once that relationship is established. And what the language, structure

and explanations of §§ 7(a) and 7(b) of the House Bill evidence, the language, structure and explanations of §§ 8(b) & 8(c) confirm.

Section 8(c) thereof, which relates back to § 7(b), expressly established what can only be called a regulatory code governing the relationship between unions and their members. As we have seen, § 8(c)(1) made it an unfair labor practice for unions to "interfere with, restrain, or coerce employees in the exercise of *rights granted by § 7(b),*" rights, *inter alia*, "to have the affairs of the organization conducted in a manner that is fair to its members." Further, § 8(c)(4), in terms, made it an unfair labor practice for a union "*to deny to any member the right to resign from the organization at any time.*" There is not a hint that §§ 7(b), 8(c)(1) & 8(c)(4) of the House Bill were, "belt and suspenders" style, a mere reiteration of what had already been stated in §§ 7(a) & 8(b) of the House Bill. Indeed, of the three House Bill § 8(b) unfair labor practices, only § 8(b)(1)'s prohibition of "intimidating practices" that "interfere with rights guaranteed in section 7(a) or [that] compel • • • any individual to • • • remain a member" is even arguably addressed to the same subject matter as §§ 7(b), 8(c)(1) & 8(c)(4). But the House Report emphasizes that, as the language of the prohibition states, § 8(b)(1)'s proscription is directed against "interference by intimidation" in the sense of "harrass[ment] or abuse." H. Rep. No. 245, 30; Leg. Hist. 321. It stretches language past the breaking point to say that a provision in a union constitution limiting resignation from membership is intimidation, harassment or abuse.

5. Insofar as their actions are relevant here, the LMRA Conferees added to § 7 of the original NLRA the phrase from the House Bill "and shall also have the right to refrain from any or all such activities" and added to the Act the Senate Bill's § 8(b)(1)(A) including its proviso; the Conference Bill did not include any of the other House amendments to § 7 outlined above, the

House Bill's § 8(b)(1) or any part of the House Bill's § 8(c).

Senator Taft, the Chairman of the Senate Conferees, introduced the Conference Bill to his colleagues by stating:

> The Senate and House bills followed in some ways the same general division of the matters which were considered in the Senate. However, they were basically so different in many respects that I suppose there may have been a hundred possible differences to be considered, and they were considered for nearly 2 weeks with the House conferees. I think that as a general proposition I can say that the Senate conferees did not yield on any matter which was the subject of controversy in the Senate; certainly not on any important matter. The bill represents substantially the Senate bill. Concessions as to language were made here and there. [Leg. Hist. 1526; *see also id.* at 882 (Rep. Hartley).]

With regard to §§ 7 & 8(b)(1)(A), Senator Taft's "summary in detail of the principal differences between the conference agreement and the bill which the Senate passed" advised:

> *The second change made by the House bill in section 7 of the act (which is carried into the conference agreement) also has an important bearing on the kinds of concerted activities which are protected by section 7.* That provision, as heretofore stated, provides that employees are also to have the right to refrain from concerted activities and collective bargaining if they choose to do so. *Taken in conjunction with the provisions of section 8(b)(1) of the conference agreement* wherein it is made an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of rights guaranteed in section 7, *many forms and varieties of concerted activities which the Board, particularly in the early days, regarded as protected by the act, will no longer be treated as having that protection.*
>
> • • • •

> Section 8(b) contains the provisions of the conferees' agreement with respect to unfair labor practices by labor organizations or their agents. *Paragraphs 1(a) and 1(b) relating to acts of restraint or coercion by labor organizations are identical with the paragraph dealing with the subject in the Senate amendment.* [Leg. Hist. 1539; emphasis added.] [10]

The otherwise voluminous statement of the managers on the part of the House attached to the House Conference Report shows a well-advised reticence on the provisions at issue here.

The addition of the "right to refrain" to § 7 and its relation to § 8(b)(1)(A) is explained in the same words used by Senator Taft in his detailed analysis except that

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[10] After the vote on the conference report, Senator Taft, in a supplement to that analysis added:

> Section 7. In this section guaranteeing the right of employees to self-organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, there has been inserted the language "and shall also have the right to refrain from any and all of such activities • • •." It is contended that the inclusion of the new language destroys collective bargaining and legalizes the device of the yellow-dog contract. There is similar language in the Norris-LaGuardia Act, a statute outlawing the yellow-dog contract. Moreover, the Board itself has held that a right to refrain from the exercise of the rights guaranteed in section 7 was always implicit in the Wagner Act. (See *Pittsburgh Plate Glass Co.*, 66 NLRB 1083.) The new language therefore, merely makes mandatory an interpretation which the Board itself had already arrived at administratively. The reason for its inclusion was that similar language had appeared in the House bill and since section 8(b)(1) of the Senate bill, which was retained by the conferees, made it an unfair labor practice for labor organizations to restrain or coerce employees in the rights guaranteed them in section 7, the House conferees insisted that there be express language in section 7 which would make the prohibition contained in section 8(b)(1) apply to coercive acts of unions against employees who did not wish to join or did not care to participate in a strike or a picket line. [Leg. Hist. 1623.]

the last sentence of the House Manager's explanation includes the following concluding phrase: "since obviously persons who engage in or support unfair labor practices will not enjoy immunity under the act." H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 39-40; Leg. Hist. 543-544. And the House Managers described § 8(b)(1) as follows:

> Under the new section 8(b) of the Senate amendment, the following unfair labor practices on the part of labor organizations and their agents were defined:
>
> > (1) To restrain or coerce employees in the exercise of rights guaranteed in section 7, or to restrain or coerce an employer in the selection of his representatives for collective bargaining or the adjustment of grievances. *This provision of the Senate amendment in its general terms covered all of the activities which were proscribed in section 12(a)(1) of the House bill as unlawful concerted activities and some of the activities which were proscribed in the other paragraphs of section 12(a).* While these restraining and coercive activities did not have the same treatment under the Senate amendment as under the corresponding provisions of the House bill, *participation in them, as explained in the discussion of section 7, is not a protected activity under the act.* Under the House bill, these activities could be enjoined upon suit by a private employer, specific provision was made for suits for damages on the part of any person injured thereby, and employees participating therein were subject to deprivation of their rights under the act. The conference agreement, while adopting section 8(b)(1) of the Senate amendment, does not by specific terms contain any of these sanctions, but an employee who is discharged for participating in them will not, as explained in the discussion of section 7, be entitled to reinstatement. [H. Conf. Rep. No. 510, 42-43; Leg. Hist. 546-547.] [11]

It bears emphasis that each of the foregoing explanations of the effect of adding a "right to refrain" to § 7 and the § 8(b)(1)(A) union unfair labor practice to the Act, like the House Report's explanation of the addition of that right to § 7(a) of the House Bill (*see* p. 25 *supra*), claims only that the purpose is to narrow the Board's authority to bring coercive or otherwise unlawful activity within the protections of the Act; there is not even a suggestion of a purpose to regulate the relationship between unions and their members.

Finally, while the House Managers' statement never mentions § 7(b) of the House Bill and the determination not to include that provision in the Conference Bill, the fate of § 8(c) of the House Bill is acknowledged:

> *Section 8(c) of the House bill contained detailed provisions dealing with the relations of labor organizations with their members. One of the more important provisions of this section*—that limiting the initiation fees which a labor organization may impose where a permitted union shop or maintenance of membership agreement is in effect—*is included in the conference agreement (sec. 8(b)(5))*

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[11] In explaining the decision not to include § 12 of the House Bill in the Conference Bill, the House Managers returned to the same theme:

> Many of the matters covered in section 12 of the House bill are also covered in the conference agreement in different form, as has been pointed out above in the discussion of section 7 and section 8(b)(1) of the conference agreement. Under existing principles of law developed by the courts and recently applied by the Board, employees who engage in violence, mass picketing, unfair labor practices, contract violations, or other improper conduct, or who force the employer to violate the law, do not have any immunity under the act and are subject to discharge without right of reinstatement. The right of the employer to discharge an employee for any such reason is protected in specific terms in section 10(c). [H. Conf. Rep. No. 510, 59; Leg. Hist. 583.]

and has already been discussed. *The other parts of this subsection are omitted from the conference agreement as unfair labor practices,* but section 9(f)(6) of the conference agreement requires labor organizations to make periodic reports with respect to many of these matters as a condition of certification and other benefits under the act. [H. Conf. Rep. 510, 46; Leg. Hist. 550; emphasis added.]

In sum, there is not a word in the explanations of the Conference Bill claiming any of the following:

• That the addition of the "right to refrain" to § 7, taken separately and/or in conjunction with the inclusion of § 8(b)(1)(A) and its proviso in the Act, is intended to grant the Board the authority—expressly granted in §§ 7(b), 8(c)(1) & 8(c)(4) of the House Bill none of which were included in the Conference Bill—to make union rules restricting resignation from membership an unfair labor practice.

• That the addition of the "right to refrain" to § 7 in conjunction with the prohibition of § 8(b)(1)(A) is intended to limit or to override the § 8(b)(1)(A) proviso's protection of union rules "with respect to the • • • retention of membership".

• That the addition of the "right to refrain" to § 7 is intended to grant union members a right to resign at will in contravention of the union's rules limiting resignation.

6. Given the foregoing legislative history, the governing precedent is *Labor Board v. Drivers Local Union,* 362 U.S. 274, where this Court rejected an earlier Board attempt to read into § 8(b)(1)(A) a union unfair labor practice stated in the House Bill that the 1947 Congress did not choose to enact into law:

> Plainly • • • the [union's] conduct in the instant case would have been prohibited if the House bill had become law.
>
> But the House conferees abandoned the House bill in conference and accepted the Senate proposal. • • •

> This history makes pertinent what the Court said in *Local 1976, United Brotherhood of Carpenters v. Labor Board,* 357 U.S. 93, 99-100: "It is relevant to recall that the Taft-Hartley Act was, to a marked degree, the result of conflict and compromise between strong contending forces and deeply held views on the role of organized labor in the free economic life of the Nation • • •. This is relevant in that it counsels wariness in finding by construction a broad policy . . . as such when, from the words of the statute itself, it is clear that those interested in just such a condemnation were unable to secure its embodiment in enacted law." [362 U.S. at 289-290.]

And the express protection for union membership rules stated in § 8(b)(1)(A)'s proviso together with the legislative history we have outlined unequivocally demonstrates that the Board's major premise for its conclusion that § 8(b)(1)(A) is a grant of authority to invalidate all union restrictions on resignation from membership is wrong. The essence of the Board's rationale as most recently restated is:

> [R]estrictions on resignations impair the fundamental policies found in the express language and consistent interpretation of Section 7. That section expressly grants employees "the right to refrain from any or all" protected concerted activities. *This statutory right encompasses* not only the right to refrain from strikes, but also *the right to resign union membership.* [*Neufeld Porsche-Audi,* 270 NLRB No. 209, Sl. Op. 10; emphasis added.]

The short but complete answer is that neither § 7, nor any other provision of the NLRA as amended by the LMRA, "encompass[] • • • "the right to resign union membership." The 1947 Congress rejected §§ 7(b), 8(c)(1) & 8(c)(4) of the House Bill which did encompass that right and chose instead to enact the proviso to § 8(b)(1)(A) so as "*not* [*to*] *impair* the right of a labor

organization to prescribe its own rules with respect to the acquisition or retention of membership." [12]

7. In *Textile Workers*, and again in *Machinists*, the Court held that "Where a member lawfully resigns from a union and thereafter engages in conduct which the union rule proscribes, the union commits an unfair labor practice when it seeks enforcement of fines for that conduct." See *Machinists*, 412 U.S. at 87, *quoting Textile Workers*, 409 at 217. In those cases, the Court looked to the "law which normally is reflected in our free institutions" and that defines the "right of the individual • • • to resign from associations" to determine whether a union member has "lawfully resign[ed] from membership where the union's "constitution and bylaws are silent on the subject of voluntary resignation." *Machinists*, 412 U.S. at 88.

As the Court stated in *Machinists*, under that body of law, in that circumstance, "members [are] free to resign at will." 412 U.S. at 87-88. *See also* 7 C.J.S., Associations, § 24 ("[I]n the absence of any statute or rule of the association to the contrary, a member may resign or withdraw from the society at his pleasure"); *Communication Workers v. NLRB*, 215 F.2d 835, 838 (2d Cir. 1954) ("Concededly the Union Constitution and bylaws are absolutely silent as to whether a member can voluntarily resign. Hence we think that the common law doctrine on withdrawal from voluntary association is apposite. Under that doctrine, a member of a voluntary association is free to resign at will, subject of course to any financial obligations due and owing the association."); *Braddom v. Three Point Coal Corp.*, 288 Ky. 734, 157 S.W.2d 349, 352 (1941) (adopting C.J.S. statement and noting that the union's bylaws and charter did not prescribe either the duration of membership or the method of termination); *Wall v. Bureau of Lathing & Plaster*, 117 So.2d 767, 771 (Fla. 1960) ("[W]here there is no provision for resignation, the general right of a member of a voluntary association to withdraw therefrom at any time, and have his resignation effective immediately, must prevail.").

[12] The *Neufeld Porsche-Audi* Board's discussion of the "fundamental policies" of the Act rests on the supposition that *Scofield v. NLRB*, 394 U.S. 423 states the "appropriate test to evaluate the lawfulness" of union resignation rules. 270 NLRB No. 209, Sl. Op. 9. *Scofield* states that to be valid under § 8(b)(1)(A) *union rules that address the substance of what union members may do without being subject to union discipline*, must *inter alia*, "impair[] no policy Congress has embodied in the labor laws." 394 U.S. at 430. It is our view that the *Scofield* test does not apply to a rule that does no more than state how and at what times an individual may become a member or how and at what times an individual may resign membership. We do not develop this point more fully because as shown in the text, union resignation rules do not in any event impair any policy that Congress has embodied in the labor laws.

Since, as we have shown, the § 8(b)(1)(A) proviso preserves intact "the right of a labor organization to prescribe its own rules with respect to the • • • retention of membership," the inquiry in this case reduces to that undertaken in *Textile Workers* and *Machinists*: whether under the common law of associations the resignations here were lawful. And, under that body of law, where there is a "contractual restriction on a member's right to resign" (*Machinists*, 412 U.S. at 88), the rule is as follows:

> An affiliation with an association ordinarily is viewed as constituting an implied agreement to be bound by its constitution and bylaws. • • • A member, by becoming such, subjects himself, within legal limits, to the power of the association to make and administer its own rules, and accordingly, is subject to the regulations governing membership and the rights of the members, as set forth in its charter, constitution and bylaws. • • • *Where the rules of an association provide for the withdrawal of members, there can be no withdrawal except in the manner and on the conditions prescribed.* [7 C.J.S. Associations, §§ 6, 19, 22; emphasis added; footnotes omitted.]

See also 6 Am. Jur. 2d Associations and Clubs, § 26; *Colonial Country Club v. Richmond*, 140 So. 86 (La. 1932) (when resignation must be delivered to secretary of club by January 1 to be effective, delivery to the club's "golf professional" insufficient); *Boston Club v. Potter*, 212 Mass. 22, 98 N.E. 614, 615 (1912) (resignation not permitted while back dues continue to be owing); *Ewald v. Medical Society*, 70 Misc. 615, 128 N.Y.S. 886, 888, 891 (N.Y.App. 1911) (upholding enforcement of provision in county medical society's bylaws that "[n]o resignation shall be accepted from a member [who is] • • •under [ethical] charges," in part because "any discreditable act of a member in his professional relations tends to discredit the [entire medical] society"); *Associated Press v. Emmett*, 45 F. Supp. 907, 919, 921, 923 (S.D. Cal. 1924) (upholding enforcement of provision in wire service's bylaws stating that members of wire service may resign from membership only upon two years' notice or consent of the Board of Directors, whichever comes sooner.) *Compare Haynes v. Annandale Golf Club*, 4 Cal. 2d 28, 47 P.2d 470 (1938) (bylaws providing without more that resignations must be "accepted" to be effective are unenforceable).

The earliest American case in point we have found is *Troy Iron and Nail Factory v. Corning*, 45 Barb. 231 (N.Y. 1864). In *Troy Iron*, an association of landowners, formed to improve the quality and flow of a stream running through its members' property, sued a member who had attempted to resign and had refused to pay his dues because he had concluded that his membership benefits were not commensurate with his dues payments. The Court entered judgment for the association, approving the association's rule that no member may resign so long as he continues to own or occupy land that would be benefitted by improvements in the flow of the stream:

> It would be impossible, as a condition of withdrawal, to deprive them entirely of the use of the water

> power which had been largely increased and furnished them by the improvement made by the association, and utterly impracticable to restore the parties to the same equitable footing which they relatively occupied before the improvements were made by the association. [45 Barb., at 255-256.]

A more recent decision to the same effect is *Leon v. Chrysler Motors Corp.*, 350 F. Supp. 877 (D.N.J. 1973), *aff'd mem.*, 474 F.2d 1340 (3rd Cir. 1974), which held that automobile dealers who join other dealers in a mutual advertising association are bound by a clause in their membership agreement providing that no dealer may withdraw from membership except with the consent of a majority of the association's members:

> [T]he promise of each [dealer] to join was an incentive for all to assent to mutual cooperation. Indeed, it was a powerful incentive, as any nonassociating dealer would reap the harvest of the Association's labor without shouldering his fair share of the costs. The same would be equally true of those who joined but later seceded. To prevent a potential floodtide of withdrawals, the Associations adopted [the majority approval requirement]. • • • That obligation may not now be dishonored simply because plaintiffs have become convinced they made a poor bargain. [350 F. Supp. at 886, 888.] [13]

These cases, and others like them, establish that an association may place restrictions on its members' right to resign where such restrictions are designed to further

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[13] See also *Kingston Dodge Inc. v. Chrysler Corp.*, 449 F. Supp. 52 (M.D. Pa. 1978), another mutual advertising case, where the court similarly held an automobile dealer bound by his agreement not to resign from the association unless the majority consented to such withdrawal. ("[T]o permit a member to withdraw against his solemn promise, which incidentally was the bargained for consideration, would not only harm the remaining members but would enable the withdrawing member to still reap the benefits of the association's mass advertising." 449 F. Supp. at 55.)

a basic purpose for which the association was formed. The Union's resignation rule is, of course, precisely that type of restriction. See *Allis-Chalmers*, 388 U.S. at 181-182.[14] The Pattern Makers promulgated that rule to protect the common interest of maintaining a united front during the most critical time a union faces—an economic strike. Each member joined the Unions, or retained his membership when free to resign, with the understanding that he was agreeing not to resign during a strike or when a strike appeared imminent, and with the further understanding that other members were agreeing to be similarly bound.

In the context of this strong interest in group solidarity, the result under the established common law principles is clear: While no employee in the bargaining unit is required to join the union in the first place, once he joins and begins receiving the benefits of union membership, the fundamental law of associations dictates that he may be bound by a union resignation rule of the kind at issue here, to which he agreed and from which all members mutually benefit, requiring him to continue his membership when the union is in greatest need of solidarity.

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[14] The Court said there:

> National Labor policy has been built on the premise that by pooling their economic strength and acting through a labor organization freely chosen by the majority, the employees of an appropriate unit have the most effective means of bargaining for improvements in wages, hours, and working conditions.
>
> * * * *
>
> Integral to the federal labor policy has been the power in the chosen union to protect against erosion [of] its status under that policy through reasonable discipline of members who violate rules and regulations governing membership. *That power is particularly vital when the members engage in strikes. The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and "[t]he power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent . . . ."* [388 U.S. at 180-181; emphasis added.]

CONCLUSION

For the above-stated reasons, the judgment below should be reversed.

Respectfully submitted,

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